

Is Bulgaria's Rule of Law about to Die under the European Commission's Nose? The Country's Highest-Ranking Judge Fears So

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On 17 April 2019, the President of Bulgaria's Supreme Court of Cassation Lozan Panov was the [keynote speaker](#) at a yearly event dedicated to court independence. Since his appointment as the highest-ranking judge in Bulgaria, Panov [has been outspoken](#) about the abuses to which he has been subjected because he refuses to comply with political orders. The speech he gave at this conference, however, stands out due to its pessimism. Panov painted a vivid, yet gruesome picture of Bulgaria's rule of law which is about to die like an oblivious frog in a pan of hot water reaching tipping point. Sadly, EU institutions have been turning a blind eye to the troublesome developments in Bulgaria for far too long.

Judge Panov's alarming message

'At the moment, we are witnessing an extremely fierce fight to fully capture the courts because there are still magistrates in the justice system who defend the dignity and the honor of our profession', the President of Bulgaria's Supreme Court of Cassation contended. 'What can the President of the Supreme Court do in this situation?', he asked rhetorically. 'His words are the only thing he has been left with. He cannot remain apolitical because respecting the Constitution is a political issue', he asserted.

To describe the present challenges, judge Panov referred to a quote by attorney Valentin Braykov: 'Violent wild boars have rushed into the fields of Bulgarian law. #they are rooting up what has been sown. In the past few years, we have seen unprecedented normative debauchery which jeopardizes legal relics. Rights which have been acquired by virtue of classic legal institutes are taken away retroactively with brutal force. The view can only be compared to the Titanic rescue boats – the stronger kick the weaker and the helpless, so that they drown'. Moreover, Panov asserted: 'In our country, all those who are independent of the government are under constant attack. Lists of "enemies" and "traitors" are published in the newspapers while xenophobia and hatred have become a government policy'.

Judge Panov underscored that current events reminded him of the rise of Nazism in Germany and proceeded to explain how German courts were captured by the Nazi regime. 'The Nazi regime was counting on loyal judges who willingly transformed Germany's liberal law into a tool of oppression, discrimination and genocide', he emphasized. The highest-ranking Bulgarian judge drew attention to the German

judges who resisted Hitler – for instance, Lothar Kreyssig who opposed a Nazi program for euthanizing disabled children. According to Panov, Germany's Minister of Justice met with Kreyssig to pressure him to change his views, but after the meeting he concluded that 'a man who cannot accept the will of the Führer as the highest source of law cannot have judicial duties'.

Panov stressed that Bulgaria was not ready for EU membership when it was admitted and highlighted the inefficiency of the Cooperation and Verification Mechanism (CVM) to which Bulgaria is subjected because there are no sanctions for noncompliance. 'Our European partners were naïve to believe that our country would automatically recognize and embrace...the values on which old Western liberal democracies are based... The hypocrisy in the relations with [our] European partners has gradually created the conditions for us to eradicate the basic principles on which democracy is built', the President of Bulgaria's Supreme Court of Cassation lamented.

Unpacking the message

Judge Panov's speech is brave, but heartbreaking. It provides ample food for thought:

Capturing the courts

In a prior [article](#), I explained how and why Bulgaria's government entered into the homestretch of capturing the entire justice system. Not only did Bulgaria not reform its Soviet-inspired Prosecutor's Office, but the government enacted legislation increasing its excessive powers. The Supreme Judicial Council which is the body responsible for appointing and promoting all magistrates and for monitoring their ethical values in practice acts like a mouthpiece of the government. In his latest speech, judge Panov himself said that the capture of this institution had almost been completed.

Judges who refuse to follow political orders are abused – from tarnishing campaigns in pro-government media, through disciplinary proceedings and attempts of impeachment, to physical threats. Judge Panov [has previously complained](#) about harassment, including abuses against his family, because he opposes the omnipotence of Bulgaria's General Prosecutor and refuses to comply with political whims. The European Court of Human Rights has also recognized that Bulgaria is the only member of the Council of Europe with a vertical Prosecutor's Office without checks and balances – see [Kolevi v Bulgaria](#) (2009). Bulgaria still has not executed this decision.

Bulgaria also created a parallel court system (specialized criminal courts) which rivals the ordinary criminal chambers. These courts have the features of extraordinary tribunals and are currently used to legitimize prosecutorial arbitrariness, thus reminding of kangaroo courts. In April 2019, Bulgarian citizens were shocked that two mayors (Ivancheva and Petrova case) were respectively [sentenced](#) to 20 and 15 years in jail for allegedly demanding (not receiving) a bribe

even though the main proof against them were witness statements by a person who said those were false and extracted under threats by Bulgaria's authorities. The Deputy General Prosecutor [Ivan Geshev](#) argued that the fact the witness retracted his witness statements was 'irrelevant' because 'all gypsies [changed] their minds anyway'.

Although the sentence has not entered into force since there are two more instances of appeal, the judicial panel ordered Ivancheva's and Petrova's permanent arrest because they benefitted from strong public support, so they could hide from justice. This argument is hardly convincing from a legal standpoint. It also sounds like a verdict against civil society members (all presumed guilty) because helping somebody to hide from justice is a crime defined in Article 294 of Bulgaria's Criminal Code. Many civil society members are convinced the mayors have been framed by Bulgaria's authorities because they opposed GERB's (the *Citizens for European Development of Bulgaria* party) policies. The two women were arrested in a humiliating way and subsequently subjected to degrading treatment in custody and a media trial in pro-government media: their case is even described in the US State Department's [2018 Human Rights Report on Bulgaria](#). The established Professor of Political Science Evgenii Dainov [referred to](#) Ivancheva and Petrova as 'political prisoners'.

The violent wild boars in the legal fields

Bulgaria's GERB-dominated government carried out a major crackdown on rights and freedoms – secret arrests of up to 48 hours are now legal, accused people and suspects are deprived of procedural rights, one could have the status of accused in perpetuity without having the ability to defend themselves in court, etc. Retroactive laws and laws enacted *intuitu personae* are common, too.

An example of legislative arbitrariness includes the government's reaction to a Decision on Interpretation handed down by Bulgaria's Supreme Court of Cassation in December 2018. Under Bulgarian law, the Supreme Court can render such decisions when the law is unclear – arguably, they have the status of a primary source of law. In [Decision on Interpretation 4/2016](#) of 7 December 2018, after reviewing Bulgarian legislation, the EU Charter of Fundamental Rights, the European Convention on Human Rights and case law by the European Court of Human Rights, the Supreme Court of Cassation concluded that unless there is a guilty verdict, a person's property cannot be confiscated. In response, on 10 December 2018, GERB introduced a [bill](#) for amendments to the Law on Confiscation. The bill was [approved](#) by Parliament on 12 December 2018 without any discussion and without any consultation with civil society. It also entered into force retroactively on 23 January 2018.

This arbitrariness shocked not only Bulgaria's civil society, but also the legal profession. In December 2018, prominent attorneys sent a [letter of protest](#) to the GERB member (Danail Kirilov) who introduced this bill as well as other controversial bills. 'The brutal violation of human rights, the creation of extraordinary courts, the successful attempts of Bulgaria's prosecution to influence their work...evidence

the departure of legislation in a totalitarian direction. This is inadmissible in an EU member', the letter stated.

The discussion on Nazism

Judge Panov could have discussed the rule of law decline in Hungary or Poland at length, but he chose to concentrate on the rise of Nazism. Why? One should remember that during communism, one of the ways to avoid censorship was to use allegories. In 1982, Zhelyu Zhelev, Bulgaria's first democratically elected President after the end of communism, published his book *Fascism* which focused on the common features between fascism and communism. In practice, it was a powerful critique of communism, so it was banned by Bulgaria's regime.

Judge Panov did not mention the name of Prime Minister Boyko Borissov in his speech, but when he referred to the 'to the will of the Führer as the highest source of law', many recognized Borissov, including pro-government media which immediately attacked Panov and indulged in yet another tarnishing campaign against him. Bulgaria is often shaken by scandals of judges being instructed by the government how to decide cases – the most well-known one is [Yaneva Gate](#). All of them have been covered up by Bulgaria's government-friendly Prosecutor's Office.

Pro-government media constantly publish lists of enemies and spread slanderous, false information about them – judge Panov is usually in the catalogue, but he is not the only one. Journalists, civil activists, scholars, businessmen who resist illegitimate pressure by the government, etc. make these lists too. Legislation non-compliant with EU Treaties is enacted as GERB pleases – for instance, multiple amendments to Bulgaria's criminal codes in the past two years. The prosecution has raised various absurd charges against critics with the clear purpose of silencing them. An example includes the case of the investigative journalist [Ognyan Stefanov](#) who is currently facing several accusations by the Prosecutor's Office. Eleven years ago, he was [beaten up](#) with hammers almost to death because of his articles against corruption.

It should not be forgotten that GERB, a member of the EPP, is in a coalition with three far-right parties. Krasimir Karakachanov, the leader of one of GERB's far-right allies (VMRO) who is Bulgaria's Vice Prime Minister and Minister of Defense, persistently uses a rhetoric of polarization to stigmatize Bulgaria's vulnerable Roma minority which comprises almost 10% of the country's population. He has [overtly referred](#) to the necessity for a 'final solution to the gypsy question' and has emphasized that 'Bulgarians have no more patience for the gypsy arrogance'. While it is highly unlikely that he meant concentration camps, the choice of words from the Nazi narrative, combined with the use of 'gypsy', which is now considered derogatory, instead of 'Roma', does not look like a mere example of poor linguistic taste. Karakachanov's bouquet of 'solutions' [includes](#) 'free abortions' to limit the Roma population and destroying Roma housing, neither of which seems compliant with the EU Charter of Fundamental Rights. Of course, words do matter especially when they come from the Vice Prime Minister. In 2019, the Chairman of the US Helsinki Commission Rep. Alcee L. Hastings [condemned](#) 'a mob attack against the

Roma community and a police station in Gabrovo, Bulgaria' as well as the anti-Roma rhetoric at the highest ranks of Bulgaria's government.

Moreover, every year Bulgaria is the venue of a large-scale [neo-Nazi march](#) (Lukov March) – an event which has been condemned by the World Jewish Congress. The Bulgarian Association of Holocaust Survivors and Their Children [argues](#) that the representatives of GERB and VMRO voted against the ban on this march at Sofia's city council, thus in practice supporting the event. Sadly, antisemitic incidents have become common – in 2019, Sofia's [synagogue](#) and an anti-fascist [memorial](#) were vandalized.

Brussels' complicity

Experts on the rule of law have criticized EU institutions for their inertia regarding the rule of law decline in Poland and Hungary. Yet, Bulgaria's case is more troublesome because of the CVM under which the European Commission monitors and verifies progress in key areas, such as the legal framework, judicial independence, and the fight against corruption. In a prior [article](#), I argued that the CVM gradually became an exercise in flattery. In fact, the 2018 report under the CVM declared three benchmarks 'provisionally closed': judicial independence, the legal framework, and the fight against organized crime. By itself, the latest speech by judge Panov provides evidence that these conclusions do not correspond to reality.

One may also wonder if the European Commission has not encouraged the damage to Bulgaria's rule of law because both flattery and silence pour water into an autocratic mill. As explained above, judge Panov refers to 'hypocrisy in the relations' between Bulgaria and EU institutions, which 'has gradually created the conditions for us to eradicate the basic principles on which democracy is built'. The abuses of judges are ignored by the CVM reports. The [2018 report](#) refers to 'targeted media harassment' for the first time. However, by far, media harassment is not the only type of abuse to which judges are subjected. Meanwhile, historically, the European Commission has verified as progress the amendments to Bulgarian legislation undermining human rights as well as the creation of extraordinary tribunals and an Anti-Corruption Commission (KPKONPI) without checks and balances. Justice for Everyone, an association defending the rule of law in Bulgaria, [argues](#) the latter institutions are used for the harassment of the government's inconvenient opponents. Moreover, the Anti-Corruption Commission is currently shaken by a [corruption scandal](#) involving its President and Vice President, which was exposed by the Bulgarian partner of the Organized Crime and Corruption Reporting Project Bivol.

In December 2018, *Magistrats européens pour la démocratie et les libertés* (MEDEL) sent an [open letter of concern](#) to President Juncker and Commissioner Jourova (Justice, ALDE) challenging the conclusions in the latest CVM report on Bulgaria and raising awareness of the harassment of judges in the country. The Commission's [response](#) may serve as an illustration of the hypocrisy judge Panov mentioned in his speech – the Commission assured MEDEL that it monitored closely Bulgaria's and Romania's case and that it was open to receiving feedback from stakeholders. Meanwhile, in 2018 and 2019 Commissioner Timmermans (Rule of Law, PES) made several [public statements](#) in which he praised Bulgaria's progress in the area of rule

of law and said the CVM could be lifted for Bulgaria before the end of the Juncker Commission's term. In parallel, when confronted about the abuses of judges in Bulgaria in July 2018 by a journalist, Commissioner Jourova said this was a '[new thing](#)' for her. Almost a year later, this 'thing' cannot be 'new', but Jourova seems to have refrained from public statements on this issue, apart from a [tweet](#) 'welcom[ing] positive progress in Bulgaria' under the CVM in November 2018. Jourova's tweet refers to the CVM report which provisionally closed the judicial independence benchmark.

Can you fight violent wild boars?

Judge Panov's speech can give painful lessons to all legal scholars who believe that EU institutions could play a vital role in preventing the rule of law decline in EU member states. If the highest-ranking judge in an EU member subjected to the CVM is that pessimistic, we should all be worried. Neither Article 7 TEU nor the proposed [Regulation](#) on the rule of law could be viable corrective mechanisms if there is no political will and dual standards prevail.

Bulgaria's rule of law disintegrated while the European Commission praised the country's fictitious progress. One may blame the political status quo in Brussels, or one may realize that counting on the Brussels' fickle political weather to help solve rule of law issues is unwise. Bulgaria has an EPP-led government which explains the support by the EPP, but how can one explain the complicity of PES and ALDE? The rule of law seems to have a price tag and the emperor has no clothes.

